

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COUNTY OF NEWPORT**

The Town Council of the Town of Tiverton, County and State aforesaid held a Special Meeting and Workshop Session on the 19th day of December 2013 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

MEMBERS PRESENT:

Council President Roderick, Vice President deMedeiros, Councilor Arruda, Councilor Chabot, Councilor Gerlach, Councilor Lambert and Councilor Pelletier
Interim Town Administrator, Solicitor Teitz were also present.

SPECIAL MEETING AGENDA:

1. Call To Order

President Roderick called the Council to order with a pledge of allegiance to the flag and roll call.

2.Cynthia Avenue–Discussion and Possible Vote on Determination of Ownership and Services

Councilor Roderick opened to the public.

Speaker #1 James O'Dell, Warren Avenue -Mr. O'Dell read a brief statement of fact and reasons why he felt the Town Council should seriously consider this decision. Stated problems with the Street Committee per Charter relative to membership; illegally formed had no standing and violation under RIGL 36 Chapter 14, 36-14-1 regarding public officials adhering to high standard of ethical conduct. Commented on DPW Director being part of Committee. Spoke to prior DPW Director who told him Cynthia Ave was a paved road and maintained by our DPW for many years approving telephone poles in 1960 and 1974. Opined should continue services.

Solicitor responded relative to Street Committee issues. Had been brought to his attention regarding a different committee that membership needs to be electors per Charter. Doesn't believe any ethical issues involved but do have Charter issue which is why Street Committee (S/C) has not met and a corrected resolution was adopted making the DPW Director ex-officio.

Speaker#2 Shane Gendreau, 40 Cynthia Avenue - Purchased home in 1997, always had trash pickup in front of house, snow plowing and sanding. Street lights and maintenance have been done to road including filling potholes by Town. Contacted prior owner and they confirmed during 38 years living there they also had services. Also had plow list and trash pickup list showing Cynthia Ave on the list.

Council President Lambert briefly discussed current mix of accepted public roads, paper streets, unaccepted and private roads relating to Town's right and responsibility to maintain those roads not accepted. Solicitor Teitz opining that as long as the Town is allowing building to occur on these roads, it is the Town's responsibility to make sure roads are passable for emergency vehicles. Suggested it would be better to fix the underlying problems.

Mr. Gendreau presented documents from 1960 Narragansett Electric on poles and minutes from 5/21/1964 where it was recommended Campion Ave, a non-accepted Town road at the time, should have something done to improve the condition of the road. Had received letter from Town in early spring 2012 asking him to attend S/C meeting because Cynthia Ave was not accepted. Nothing was determined at that time. Attended another meeting and again nothing determined. Last meeting was

5/10/2012 and heard nothing since that date. Residents thought would be revisited by new S/C. On 12/3/2013 received letter from DPW Director stating unless grade and fix road, will not receive plow services. Road has become safety issue; cars and trucks stuck on road due to icy conditions, kids waiting for bus stops standing on ice, cars pulling onto road from Crandall not aware of icy conditions and slide. One resident veteran didn't get prescriptions because too difficult for mail truck. Residents feel discriminated. If never maintained the road, then why the letter to stop, feels is town accepted and should be brought to drivable conditions.

Speaker#3 Kyle deMedeiros, 30 Cynthia Ave - Mr. DeMedeiros wanted to add his deed did not state anywhere that road was private. Also had town plat stating Cynthia Ave is a public right of way. Felt impossible for residents to gain money to clear road and make sure graded in a month's time, absolutely no sense.

Speaker #4 Nicole Robinson, 37 Cynthia Ave - Ms. Robinson stated she had copy of her title search and deed from Chicago Title Co. which states public road. Bought home in 2004, would have never bought on private road. Physically cannot afford to maintain road, public safety hazard. Stated car needing to be pushed out of road because stuck. Urged Council to consider something.

Speaker #5 Mike Normandin, 31 Cynthia - Lived on Cynthia Ave for 23 years. Never seen road in this condition. Town has maintained all time he has been there. Used ambulance service in past. Doesn't have confidence emergency vehicles could get down today.

Speaker #6 Patrick Dougherty, Esquire, represents Audry Gloddy and Brian Sanford
Appeared before S/C a year ago. Has done a lot of research and has official Town documents which clearly show Cynthia Ave as a public street. Not delineated as private where other streets are. On a number of plat maps shown as street with termination point and beginning point. Town hall records were not in best shape in prior decades. Worked in land evidence room and found an inordinate number of documents which contradicts what DPW is alleging regarding Cynthia Ave.

Solicitor's position is there are two forms of acceptance for public rights of way which gives public right to travel over property. Mr. Dougherty's memo deals with those disputes where certain people want to say it is private often on waterfront rights of way. Other people say no that it is public right of way. True was dedicated to public as far as being put forth in initial plan of property called Cynthia Ave and public has right to travel across. To that sense is public way.

Solicitor commented second aspect of public streets is Town acceptance which is responsibility of maintaining it. In that aspect Cynthia Ave has never been accepted. Specifically refer to 45-23-43 RIGL dealing with subdivision which is codification, but there is case law before then as well. Subsection F talks of acceptance of public improvements. Signature and recording as specified in 45-23-64 and that's where the P/B Chairman constitutes acceptance by the municipality of any improvements. Final plan approval shall not impose any duty upon the municipality to maintain or improve these dedicated areas until the governing body of the municipality accepts completed improvement with compliance to final plans. That is the aspect, the acceptance with the purpose of maintenance that has never happened here because it has not been developed to the standards. Clearly one of the key owners of the property at the time of the plan to revise how the subdivision was laid out said on the record she didn't want it to be a public road. This reflects Solicitor's opinion. No evidence accepted by Town. Evidence of things done, most indicate acceptance of ownership but not the maintenance requirement. Question for Council to decide. A memo that quoted Solicitor on 3/21 regarding Bull Frog Lane, in fact ignores the line in the very memo that states lack of acceptance by the

Town for purposes of street maintenance would not necessarily preclude approval of the request on the pole. So one can accept a light pole request based on ownership as accepted public right of way but not accept street maintenance.

Atty Dougherty explained the State of RI law that once plat has been recorded and accepted in Town, there is a street laid out and lots sold in reference constitutes an incipient dedication which is an irrevocable offer to grant right to that piece of property delineated on the plat as a road or street to the Town. Up to the Town to accept and number of ways to do. One is public use of road, over time. Tiverton has maintained the road, evidence of already doing it. Have very broad body of evidence dating back to 1961 subdivision regulations adopted by Council stating explicitly private streets and driveways shall not be shown on plat. Cynthia Ave on plat maps for decades. Town has exercised ownership. Plowed and picked up trash as well as maintained. Regarding Ms. St. Laurent's intent, she did say she didn't want the Town to accept the road. That's an acknowledgement that there is an incipient dedication by Ms. St. Laurent when she put the plat into the land evidence records and when it was approved that it would constitute an irrevocable offer to the Town of that land for a public street. Asked Council to consider their decision very carefully and not simply base on reducing road maintenance budgets.

Solicitor questioned Atty Dougherty regarding the last 200 ft which Mr. Sanford owned. If the Town doesn't act on it and take over that portion of road, the rest of it is left open to adverse possession claim of that particular piece of property.

DPW Director Steve Berlucchi - Councilor deMedeiros asked Mr. Berlucchi to explain why he stated it was debatable whether or not the road had been maintained in the past. Berlucchi stated he had been in the position 6 years and has never maintained that road. Pick up rubbish and plow as long as passable. Laborer who they hire to fill and grade all other roads twice a year has not filled or graded Cynthia Ave in last 10 years. DPW Foreman Bruce Fay said never filled or graded Cynthia Ave and he has been with DPW 27 years. Don't deny in past a pot hole or so was patched as a favor. Not aware what happened before 27 years ago. Can't understand why residents saying road has been patched in the past. Grade Sawdy Pond Road but that is on ninth on the list of unaccepted private gravel roads S/C still looking at. Five streets have gone to Council and were voted as unaccepted roads with no services except rubbish pickup. Cynthia Ave is the 5th street reviewed. Not discriminatory; was there three years ago trying to help out residents. Not maintained as long as have been here. Time to determine if Council wants pickup of rubbish and plowing. Have 163 private roads and probably 33 that Council already voted as private and no services are provided.

Councilor Gerlach commented, doesn't think Council can do anything about misgivings in past. Have situation where standards were not established. Based on evidence discussed tonight, hard pressed to argue this is not a public road. Whatever action Council takes, opening up a Pandora's Box.

Speaker #7 James Costa, Bolduc's Lane - Mr. Costa's road is in the same kind of condition. He gave up fight long time ago with Council so he applauds residents of Cynthia Ave for continuing. Becomes quality of life issue. Provided Mr. Sanford with deposition that past Council members and DPW Directors have graded twice a year and maintained.

Speaker #8 Madeline O'Dell, Warren Ave – S/C voted to stop the services but Mr. Berlucchi is not an elector; questioned why Mr. Teitz appointed to committee.

Solicitor responded did not appoint Mr. Berlucchi to S/C. Councilor Pelletier stated the S/C doesn't have any authority to implement policy only makes recommendations to the Town Council.

Speaker #9 Steve Berlucchi, DPW Director - Gave brief history of Cynthia Ave and land around Cynthia Ave including junkyard owned by the St. Laurent's. Extended from Crandall Road back to Cornell Road, paper street, then subdivided and lots were sold. Originally was a dirt road. DPW has no record going back 27 years of any grading and major work on this road. Last 200ft of the 1000ft road ends up in Sanford and Sons Junkyard with a chain link fence. Currently a road that has never been accepted and Mr. Sanford maintained it, filling holes, etc while Town plowed and sanded. If DPW goes forward could constitute acceptance. Cannot go in and fix that road now, too far gone Overfilled and drainage runs into people's property, no control over water. Would cost \$65K plus engineering and legal to make road acceptable.

Councilor Lambert commented whatever problem have on Cynthia Ave can probably multiply by at least 63 more, approximately 160-163 unaccepted roads in Tiverton, roughly one third of roadway. Need to come up with some sort of plan or program that will provide a way these streets can become acceptable. Need to bring to a condition to allow Town to accept. Cannot as a Council address the variables of every Cynthia Ave that we have in Town. Suggests a special meeting to address all streets in this situation.

Councilor Chabot commented was thrust into S/C when first on Town Council which was in operation before she was elected. Her understanding of the S/C was to evaluate all roads in Town and do research. There was a big list, they did research on those roads to see if by vote ever accepted; that is the definition of accepting the responsibility to maintain the road. Lot of work done before she was on the committee. The easy roads were done right away because they were easy to find the road accepted or not. The person who owned the road would come to the Council, offer to dedicate the road and Council would decide whether or not to accept. If accepted, it would be based upon the decision that the road met the standards that were in place at the time the road was built. DPW Director would state whether or not met those standards. Town Council would make the decision to accept the road as public and accept the maintenance of the road.

In the packet provided by Mr. Berlucchi there is a pathway for unaccepted roads to be accepted by the Town (Section 8). She personally experience in 1990 building on paper road at end of Leger Lane. Went to Planning Board and T/C asking for private driveway to her property. Was told she had to build a road, spent 13K building a 180 ft long road and was unable to get building permit until put up surety for the road. Then you get the permit, build the house, inspections, then through the process of getting it approved by Town for maintenance. If they didn't accept, she would have been responsible for maintenance. Suggests many others in Town went through process. Times change, in 50's and 60's maybe not all done fairly, but that long time ago. T/C has to make decision on how to proceed with remaining roads. S/C asked residents to come forward if they had documentation that Town accepted road. Town not in business of building roads, contractors build roads. Only way Town gets involved is if contractors back out and surety is there for Town to help finish. T/C has to decide whether going to put up money to build roads left by contractors/builders in disrepair.

Councilor Pelletier asked Mr. Berlucchi to walk through the physical structure of Cynthia Ave. Berlucchi responded road has no drainage, basically dirt and gravel. In order for Town to accept the road, it has to be paved, under the pavement 4 inches of dense graded crushed stone, ¼ inch. Under that would be 8-12 inches of gravel burrow and would need to be sitting on a stable foundation. Needs to be

24 feet wide, sloped curving, drainage, and lighting with all approvals by DEM, be perked and be a 40 ft right of way. Old roads have been accepted before the current criteria.

Councilor deMedeiros asked Solicitor who owns Cynthia Ave. Solicitor responded he believes the Town has not accepted the obligation to maintain it but it is owned by the Town in the sense that it is open to the public to travel on. If someone wanted to build a stone wall across it to block it, they could not because it is used as a public way. That is the part where agrees with Atty Dougherty. However, believes the law is Town does not have the obligation to maintain it along with that ownership. Two kinds of acceptance; ownership for the public use and acceptance for maintenance. Town accepts roads that they know are constructed properly. Seems like Cynthia Ave may have at one point been paved but not kept up or done properly.

Councilor Arruda commented lives on Dion Ave that has been repaved but section where it was deteriorating and becoming gravel because of pumping water, etc. If continued to go on, over time would have a complete section of gravel. Lack consistency with streets getting service or not.

Solicitor suggests not possible for one decision to be made for all roads in same condition because they all have different fact patterns. This one has on the record planning board testimony of the developer that it was to be a private road. That is not controlling but one of several factors. Rather unique and has not seen this on any other Tiverton road issue which is why you need to look at each one individually. Just heard tonight about a deposition from 1991 case and would like to see it. Atty Dougherty will provide. Affidavits from residents stating road was maintained but no clarification of what maintained means, plowed, sanded, repaired, discrepancy on how much, when or who did the work.

Regarding maintenance, Solicitor does not believe municipality can impliedly accept a road for maintenance purposes simply by its actions. Can accept as public street by use and that doesn't even have to be by Town Council. If people use it for 20 years, can become a public road by its use. For obligation of taxpayers of the community to pave and patch the road, believes can only be done by explicit action of the Town. A vote of T/C or a vote of the Town Meeting as was done in prior years. Same analogy as reason someone cannot get adverse possession against a municipality.

Councilor Pelletier questioned when this road was built and when it was implied that the dedication was offered since no action in the record of municipality accepting the responsibility of the road which leads one to believe for some reason they didn't want it public. Over years services got extended to those areas because we didn't have formula for this methodology. Appears today have an unaccepted road in Cynthia Ave. T/C has not formally accepted the road but there is this area of concern whether or not it was implied that it was accepted. Council has to make a decision as to whether or not to accepted the road. If accept the road, has to be up to standard or there has to be an agreement to bring it up to standard. Been kicking the can for last 30 or 40 years.

Solicitor requested a cost estimate from Mr. Berlucchi to regrade current gravel to condition that would be safe to plow this winter. Mr. Berlucchi explained the process of bringing gravel in doesn't do it, needs to be reclaimed. Dig 12 inches, pulverize and dig up. Needs to haul material out since so much fill, water will flood private property. About 40K to plow for winter. Caution if do major repairs on private property. Councilor Roderick just asking question if were to do temporary fix what estimate of cost. Mr. Berlucchi estimated 4/5 thousand but won't last long.

Solicitor questioned if 20K could get through winter doing four times. Mr. Berlucchi responded road is frozen to put material on. DPW has capability to roll, fill and grade. Cost including men and material

about 5K couple times in average winter. Adding material and making higher every time. Solicitor questioned if could scrape off high spots. Berlucchi responded doesn't have equipment. Grader is 2K per day to rent. Solicitor again asked if 7K would include renting grader. Mr. Berlucchi responded nothing will last on that road, always bad, tough road; needs survey and engineering and drainage, etc about 60K.

Councilor Roderick at this time asked the Fire Department and Library if they would be willing to come back at another time since going way beyond the time limits and getting late. Both agreed to have workshop on their budgets continued to another time due to late hour.

Solicitor suggested have the ability to do nothing, not provide services and residents would be faced with coming up with money for short term fix, hard compromise. Town not permanently, but will continue plowing if passable. Other option is T/C can vote to determine if accepted by actions of the Town then you have obligation to maintain. Would be Mr. Berlucchi's responsibility, quick fix or more permanent fix if money wasted on temporary fix. Do nothing, not accepted as Town Road. Accept by past actions not withstanding everything else (not recommended) has implications on every other road.

Councilor deMedeiros agreed with Councilor Lambert bigger than Cynthia Ave, capital plan at some point, worries about public safety. Questioned if could repair enough for Mr. Berlucchi to feel safe to plow and get committee together with proper members to work on plan. Somehow need to repair and then work on plan.

Solicitor opined requires sign off of residents of Cynthia Ave acknowledging agreeing to disagree and not construed as acceptance of street. Atty Doherty suggests it be a by-lateral agreement. Not construed by Town but on behalf of abutters need same.

Councilor Gerlach willing to make commitment to address broader issue. Needs fair, equitable, compromise between Town, taxpayers and residents. Councilor Pelletier would caution this body and public from assuming we can paint all streets with same brush. Need to look at each individual situation and road with research and time; acknowledge very serious trying to fix 50 year old problems; difficult process with decisions impacting the rest of Town. Trying to do responsible thing and best for Town.

Councilor Roderick feels need 100% of residents of Cynthia Avenue willing to enter into agreement Solicitor suggests since still weeks of winter ahead, Council authorize Interim Administrator to enter agreement without either party admitting anything. Town would take temp actions to repair suitable for snow plowing contingent on sign of all owners of property to maintain public safety.

Councilor Roderick this would only be a stop gap measure. Make sure all understand not acceptance of Cynthia Avenue. Important enough to do something to provide safety. Questioned Mr. Berlucchi for time needed to temporarily fix the issue. Berlucchi responded two days grade and backfill, etc. Teitz will draft agreement and get to Atty Dougherty tomorrow. Residents should leave contact info with the Clerk and respond asap.

Solicitor suggested motion to authorize and request I/TA to provide for temp repair of Cynthia Avenue so as to allow safe passage of snow plows and public safety vehicles to be conditioned upon written agreement of all property owners abutting Cynthia Ave. This action is not a declaration of Town policy and does not constitute acceptance of Cynthia Ave and is not admissible of either the Town or the property owners and shall not constitute a waiver of any of the parties hereto as to the legal status of Cynthia Ave.

Councilor deMedeiros motioned, seconded by Councilor Chabot.

Councilor Roderick reminded Council charged with entire Town and do for greater good but when health and safety priority. If all in agreement will get this portion going then address larger issue.

Motion carried unanimously.

WORKSHOP AGENDA:

3. Discussion of Fiscal Year 2014/2015 Budget and Five Year Capital Plan With Departments

- a Library
- b. Fire Department

Councilor Pelletier motioned to table the workshop portion of the meeting for discussion on FY 2014/15 Budget and Five Year Capital Plan with the Library and Fire Departments to future meeting as yet undetermined. Councilor deMedeiros seconded the motion, passed unanimous.

ADJOURNMENT:

Councilor Pelletier motioned to adjourn. Seconded by Councilor deMedeiros, motion passed unanimously.

Council adjourned at approximately 10:10 p.m.

A True Copy.

ATTEST:

Nancy L. Mello, Town Clerk